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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,707	08/12/2003	Steven L. Carey	Wr-604D	1706

33464 7590 05/20/2004

WHITE RODGERS DIV.  
EMERSON ELECTRIC CO.  
9797 REAVIS RD.  
ST. LOUIS, MO 63123

EXAMINER
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NORMAN, MARC E

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/604,707

Applicant(s)

CAREY, STEVEN L.

Examiner

Marc E. Norman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/12/03</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Dushane et al.

As per claim 1, Dushane et al. discloses a programmable digital thermostat comprising activation means (controller 24) for running a program that maintains the last selected temperature during a non-setback time period (as set at 120), and offsets that temperature by a predetermined amount (as set at 122), wherein the activation means is selected by a single action of the user (column 9, lines 19-21).

As per claim 3, Dushane et al. discloses activating the setback program by simultaneously pressing two buttons (column 9, lines 19-21).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dushane et al. in view of Manson et al.

As per claim 2, Dushane et al. does not teach the activation means comprising a single button. Manson et al. teaches an air conditioning controller wherein an economy control mode is activated by a single button being pressed only one time (see column 5, line 29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate such single button activation of Manson et al. to the controller of Dushane et al. for the simple purpose of increasing user convenience.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dushane et al. in view of Manson et al. as applied to claim 2 above, and further in view of Shah.

As per claims 4 and 5, the recited features are common and well-known in the art of thermostat controls. Shah, for example, teaches a non-setback period being when the user is awake and the setback period being when the user is asleep (column 1, lines 18-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply these features of Shah to the system of Dushane et al. for the purpose of reducing energy costs (column 1, lines 24-25).

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As per claim 6, Dushane et al. further teaches the offset being in the range of 5 to 15 degrees Fahrenheit (column 9, line 1).

Claims 7-9, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dushane et al. in view of Abrams.

As per claims 7 and 9, Dushane et al. teaches all features of the claims (as discussed above regarding similar claims 1 and 3) except receiving a broadcast time signal for storing the local time in the thermostat. Abrams et al. teaches a system wherein thermostat 78 receives a broadcast signal for storing local time (column 8, lines 57-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply this feature of Abrams et al. to the system of Dushane et al. for the simple purpose of assuring that the clock function of the thermostat has the proper time and is synchronized with other possible appliances (Abrams et al., column 8, line 65).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dushane et al. in view of Abrams et al. as applied to claim 7 above, and further in view of Manson et al.

As per claim 8, see discussion of similar claim 2, above.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dushane et al. and Abrams et al. as applied to claim 9 above, and further in view of Shah.

As per claims 10-12, see discussion of similar claims 4-6, above.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 703-305-2711. The examiner can normally be reached on Mon.-Fri., 8:00-5:30, with first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on 703-308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MN



**MARC NORMAN**  
**PRIMARY EXAMINER**